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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,919

04/01/2005

Selim Yalvac

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5284

109 7590 10/27/2009

The Dow Chemical Company  
Intellectual Property Section  
P.O. Box 1967  
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EXAMINER

LENIHAN, JEFFREY S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

10/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,919	<b>Applicant(s)</b> YALVAC ET AL.	
	<b>Examiner</b> Jeffrey Lenihan	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-15, 17-19, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-15, 17-19, 23, and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/09/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is responsive to the amendment filed on 10/09/2009.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### ***Continued Examination Under 37 CFR 1.114***

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/09/2009 has been entered.

### ***Claim Objections***

5. Applicant is advised that should claim 10 be found allowable, claim 18 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The examiner notes that claim 18 is a verbatim repetition of claim 10.

***Claim Rejections - 35 USC § 103***

6. Claims 1-6, 10-15, 17-19, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sehanobish et al, US5861463 (of record), in view of Lai et al, US5278272 (of record).

7. The disclosures of Sehanobish and Lai are discussed in the Office Actions mailed on 12/19/2008 and 07/07/2009, incorporated herein by reference. As discussed in the previous Office Actions, the combination of Sehanobish and Lai renders obvious a composition comprising 1) at least 65% by weight of a polypropylene matrix, corresponding to claimed component A(a); 2) at least 25% of an elastomeric impact modifier (b), corresponding to claimed component A(b); and 3) at least 10% by weight of a substantially linear ethylene polymer (SLEP), corresponding to component (B).

8. Regarding the newly added limitation to claim 1 that the composition comprises at least one of the recited additives, Sehanobish discloses that the composition of US5861463 may contain a pigment (Column 7, lines 60 to Column 8, line 9) (for amended claim 1).

9. Regarding the newly added limitations of the densities: As discussed in the previous Office Actions, Sehanobish teaches that the density of the elastomeric impact modifier may be  $0.855 \text{ g/cm}^3$  (Column 4, lines 13-14). As Sehanobish teaches that the density of the SLEP is at least  $0.04 \text{ g/cm}^3$  higher than that of the elastomeric impact modifier (abstract); it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a composition wherein the elastomeric impact modifier has a density of  $0.855 \text{ g/cm}^3$  and the SLEP has a density of  $0.895 \text{ g/cm}^3$ .

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10. It has been held that a *prima facie* case of obviousness exists where the claimed ranges and the prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (MPEP § 2144.05). Independent claim 17 recites a composition wherein component (A)(b) may have a density of 0.870 g/cm<sup>3</sup> and component (B) is required to have a density less than 0.8990 g/cm<sup>3</sup>. The examiner notes that there is less than a 2% difference between the claimed density of 0.870 g/cm<sup>3</sup> (claim 17) and the prior art density of 0.855 g/cm<sup>3</sup> for the elastomeric impact modifier. Furthermore, the prior art density of 0.895 g/cm<sup>3</sup> for the SLEP falls within the claimed range of less than 0.8990 g/cm<sup>3</sup>. The examiner therefore takes the position that, because the densities of the prior art components either fall within the claimed range (for the SLEP component) or differ from the claimed value by less than 2% (for the elastomeric impact modifier), one of ordinary skill would have expected the prior art composition to have the same properties as the claimed invention. Barring a showing of evidence demonstrating unexpected results commensurate in scope with the claimed invention, the examiner therefore takes the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the claimed invention in view of the prior art (for claim 17).

11. For claims 1-3, 5 and 24; as discussed in the previous paragraph, there is less than a 2% difference between the prior art density of 0.855 g/cm<sup>3</sup> for the elastomeric impact modifier and the claimed density of 0.870 g/cm<sup>3</sup> for component (A)(b) (for claim

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1). Similarly, the difference in density between the prior art SLEP having a density of  $0.895 \text{ g/cm}^3$  and the claimed value for component (B) is either less than 1% (when the density is  $0.8900 \text{ g/cm}^3$  as in claims 1, 2) or less than 2% (when the density is  $0.880 \text{ g/cm}^3$  as in claims 3, 5, 24). Because the difference in the claimed densities values and the prior art density values is so small (i.e., less than 2%) the examiner takes the position that one of ordinary skill would have expected the prior art composition to have the same properties as the claimed invention. Barring a showing of evidence demonstrating unexpected results commensurate in scope with the claimed invention, the examiner therefore takes the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the claimed invention in view of the prior art (for claims 1-3, 5, 24).

### ***Response to Arguments***

12. Applicant's arguments filed 10/09/2009 have been fully considered but they are not persuasive. Applicant's arguments regarding the densities of the components of the prior art composition and the claimed densities values have been addressed in paragraphs 10 and 11 of this Office Action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-

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5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

/Jeffrey Lenihan/  
Examiner, Art Unit 1796

/JL/